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TOYS 'R' US – DELAWARE, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

LARRY McIVER,

Plaintiff,

vs.

TARGET CORPORATION dba TARGET
#274; COST PLUS, INC. dba COST PLUS
WORLD MARKET #145; FRIT
ESCONDIDO PROMENADE, LLC; LA
SALSA, INC. dba LA SALSA #93;
APPLEBEE'S RESTAURANTS WEST,
LLC dba APPLEBEE'S
NEIGHBORHOOD BAR & GRILL
#5711; TOYS 'R' US - DELAWARE, INC.
dba TOYS 'R' US #5633; PARTY CITY
CORPORATION dba PARTY CITY OF
ESCONDIDO #445; INLAND WESTERN
MDS PORTFOLIO, LLC

Defendants.

CASE NO.: 08 CV 0132 IEG (WMc)

[Assigned for all purposes to the Honorable
Irma E. Gonzalez]

**DEFENDANT TOYS 'R' US –
DELAWARE, INC.'S ANSWER TO
PLAINTIFF'S UNVERIFIED
COMPLAINT**

Defendant TOYS 'R' US – DELAWARE, INC. dba TOYS 'R' US (“Defendant”) hereby responds and answers the Complaint of Plaintiff LARRY MCIVER (“Plaintiff”) as to this answering Defendant only as follows:

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I. SUMMARY

1. Answering paragraph 1 of the Complaint, Defendant admits Plaintiff contends this is a civil rights action whereby Plaintiff alleges discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as Toys ‘R’ Us (“TRU”) (1240 Auto Parkway South, Escondido, California 92029). Defendant admits it operates a store at 1240 Auto Parkway South, Escondido, California 92029. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 1.

2. Answering paragraph 2 of the Complaint, Defendant admits Plaintiff requests the relief set forth in this paragraph pursuant to the laws set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 2.

II. JURISDICTION

3. Answering paragraph 3 of the Complaint, Defendant admits this court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 based upon Plaintiff’s allegations that Defendant violated the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (“ADA”). Except as expressly admitted, the remaining allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

4. Answering paragraph 4 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

5. Answering paragraph 5 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are, therefore, specifically denied.

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III. VENUE

6. Answering paragraph 6 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are, therefore, specifically denied.

IV. PARTIES

7. Answering paragraph 7 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Answering paragraph 8 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8.

9. Answering paragraph 9 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Answering paragraph 10 of the Complaint, Defendant admits it leases and operates a retail store located at 1240 Auto Parkway South, Escondido, California 92029 (hereinafter referred to as the “The Store”) and admits it is a corporation. Except as expressly admitted, Defendant denies each and every allegation contained therein.

11. Answering paragraph 11 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Answering paragraph 12 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12.

13. Answering paragraph 13 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

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14. Answering paragraph 14 of the Complaint, Defendant admits that it leases and operates a retail store located at 1240 Auto Parkway South, Escondido, California 92029. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 as to the other defendants.

15. Answering paragraph 15 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's physical condition or status as an individual protected by applicable California and United States law and therefore denies such allegations. The remaining allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

V. FACTS

16. Answering paragraph 16 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16.

17. Answering paragraph 17 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Answering paragraph 18 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

19. Answering paragraph 19 of the Complaint, Defendant admits The Store is a non-residential, sales or retail establishment open to the general public. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 19.

20. Answering paragraph 20 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

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1 21. Answering paragraph 21 of the Complaint, Defendant is without knowledge
2 or information sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 21.

4 22. Answering paragraph 22 of the Complaint, Defendant is without knowledge
5 or information sufficient to form a belief as to the truth of the allegations contained in
6 paragraph 22.

7 23. Answering paragraph 23 of the Complaint, Defendant is without knowledge
8 or information sufficient to form a belief as to the truth of the allegations contained in
9 paragraph 23.

10 24. Answering paragraph 24 of the Complaint, Defendant denies each and every
11 allegation contained in paragraph 24 as it relates to The Store.

12 25. Answering paragraph 25 of the Complaint, Defendant is without knowledge
13 or information sufficient to form a belief as to the truth of the allegations contained in
14 paragraph 25.

15 26. Answering paragraph 26 of the Complaint, Defendant is without knowledge
16 or information sufficient to form a belief as to the truth of the allegations contained in
17 paragraph 26.

18 27. Answering paragraph 27 of the Complaint, Defendant is without knowledge
19 or information sufficient to form a belief as to the truth of the allegations contained in
20 paragraph 27.

21 28. Answering paragraph 28 of the Complaint, Defendant is without knowledge
22 or information sufficient to form a belief as to the truth of the allegations contained in
23 paragraph 28.

24 29. Answering paragraph 29 of the Complaint, Defendant is without knowledge
25 or information sufficient to form a belief as to the truth of the allegations contained in
26 paragraph 29.

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1 30. Answering paragraph 30 of the Complaint, Defendant is without knowledge
2 or information sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 30.

4 31. Answering paragraph 31 of the Complaint, Defendant denies each and every
5 allegation contained therein.

6 32. Answering paragraph 32 of the Complaint, Defendant denies each and every
7 allegation contained therein.

8 33. Answering paragraph 33 of the Complaint, Defendant is without knowledge
9 or information sufficient to form a belief as to the truth of the allegations contained in
10 paragraph 33.

11 34. Answering paragraph 34 of the Complaint, Defendant is without knowledge
12 or information sufficient to form a belief as to the truth of the allegations contained in
13 paragraph 34.

14 35. Answering paragraph 35 of the Complaint, Defendant is without knowledge
15 or information sufficient to form a belief as to the truth of the allegations contained in
16 paragraph 35.

17 36. Answering paragraph 36 of the Complaint, Defendant is without knowledge
18 or information sufficient to form a belief as to the truth of the allegations contained in
19 paragraph 36.

20 37. Answering paragraph 37 of the Complaint, Defendant is without knowledge
21 or information sufficient to form a belief as to the truth of the allegations contained in
22 paragraph 37.

23 38. Answering paragraph 38 of the Complaint, Defendant is without knowledge
24 or information sufficient to form a belief as to the truth of the allegations contained in
25 paragraph 38.

26 39. Answering paragraph 39 of the Complaint, Defendant denies each and every
27 allegation contained therein as it relates to The Store.

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1 40. Answering paragraph 40 of the Complaint, Defendant denies each and every
2 allegation contained therein as it relates to The Store.

3 41. Answering paragraph 41 of the Complaint, Defendant denies each and every
4 allegation contained therein as it relates to The Store. Defendant is without knowledge or
5 information sufficient to form a belief as to the truth of Plaintiff's remaining allegations.

6 42. Answering paragraph 42 of the Complaint, Defendant is without knowledge
7 or information sufficient to form a belief as to the truth of the allegations contained in
8 paragraph 42.

9 43. Answering paragraph 43 of the Complaint, Defendant is without knowledge
10 or information sufficient to form a belief as to the truth of the allegations contained in
11 paragraph 43.

12 44. Answering paragraph 44 of the Complaint, Defendant is without knowledge
13 or information sufficient to form a belief as to the truth of the allegations contained in
14 paragraph 44.

15 45. Answering paragraph 45 of the Complaint, Defendant is without knowledge
16 or information sufficient to form a belief as to the truth of the allegations contained in
17 paragraph 45.

18 46. Answering paragraph 46 of the Complaint, Defendant is without knowledge
19 or information sufficient to form a belief as to the truth of the allegations contained in
20 paragraph 46.

21 47. Answering paragraph 47 of the Complaint, Defendant is without knowledge
22 or information sufficient to form a belief as to the truth of the allegations contained in
23 paragraph 47.

24 48. Answering paragraph 48 of the Complaint, Defendant is without knowledge
25 or information sufficient to form a belief as to the truth of the allegations contained in
26 paragraph 48.

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1 49. Answering paragraph 49 of the Complaint, Defendant is without knowledge
2 or information sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 49.

4 50. Answering paragraph 50 of the Complaint, Defendant is without knowledge
5 or information sufficient to form a belief as to the truth of the allegations contained in
6 paragraph 50.

7 51. Answering paragraph 51 of the Complaint, Defendant denies each and every
8 allegation contained therein. The remaining allegations of this paragraph are conclusions
9 of law that require no responsive pleading under the Federal Rules of Civil Procedure and
10 are therefore, specifically denied.

11 52. Answering paragraph 52 of the Complaint, Defendant denies each and every
12 allegation contained therein. The remaining allegations of this paragraph are conclusions
13 of law that require no responsive pleading under the Federal Rules of Civil Procedure and
14 are therefore, specifically denied.

15 53. Answering paragraph 53 of the Complaint, Defendant denies each and every
16 allegation contained therein. The remaining allegations of this paragraph are conclusions
17 of law that require no responsive pleading under the Federal Rules of Civil Procedure and
18 are therefore, specifically denied.

19 54. Answering paragraph 54 of the Complaint, Defendant is without knowledge
20 or information sufficient to form a belief as to the truth of the allegations contained in
21 paragraph 54.

22 55. Answering paragraph 55 of the Complaint, Defendant is without knowledge
23 or information sufficient to form a belief as to the truth of the allegations contained in
24 paragraph 55.

25 56. Answering paragraph 56 of the Complaint, Defendant is without knowledge
26 or information sufficient to form a belief as to the truth of the allegations contained in
27 paragraph 56.

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1 57. Answering paragraph 57 of the Complaint, Defendant is without knowledge
2 or information sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 57.

4 58. Answering paragraph 58 of the Complaint, Defendant is without knowledge
5 or information sufficient to form a belief as to the truth of the allegations contained in
6 paragraph 58.

7 59. Answering paragraph 59 of the Complaint, Defendant is without knowledge
8 or information sufficient to form a belief as to the truth of the allegations contained in
9 paragraph 59.

10 60. Answering paragraph 60 of the Complaint, Defendant is without knowledge
11 or information sufficient to form a belief as to the truth of the allegations contained in
12 paragraph 60.

13 61. Answering paragraph 61 of the Complaint, Defendant is without knowledge
14 or information sufficient to form a belief as to the truth of the allegations contained in
15 paragraph 61.

16 62. Answering paragraph 62 of the Complaint, Defendant is without knowledge
17 or information sufficient to form a belief as to the truth of the allegations contained in
18 paragraph 62.

19 63. Answering paragraph 63 of the Complaint, Defendant denies each and every
20 allegation contained therein as it relates to The Store. Defendant is without knowledge or
21 information sufficient to form a belief as to the truth of the allegations as they relate to
22 areas other than those controlled by The Store, if any. The remaining allegations of this
23 paragraph are conclusions of law that require no responsive pleading under the Federal
24 Rules of Civil Procedure and are therefore, specifically denied.

25 64. Answering paragraph 64 of the Complaint, Defendant denies each and every
26 allegation contained therein as it relates to The Store. Defendant is without knowledge or
27 information sufficient to form a belief as to the truth of the allegations as they relate to
28 areas other than those controlled by The Store, if any. The remaining allegations of this

1 paragraph are conclusions of law that require no responsive pleading under the Federal
2 Rules of Civil Procedure and are therefore, specifically denied.

3 65. Answering paragraph 65 of the Complaint, Defendant denies each and every
4 allegation contained therein as it relates to The Store. Defendant is without knowledge or
5 information sufficient to form a belief as to the truth of the allegations as they relate to
6 areas other than those controlled by The Store, if any. The remaining allegations of this
7 paragraph are conclusions of law that require no responsive pleading under the Federal
8 Rules of Civil Procedure and are therefore, specifically denied.

9 VI. FIRST CLAIM

10 Americans With Disabilities Act of 1990

11 Denial of "Full and Equal" Enjoyment and Use

12 (The La Salsa Facility)

13 66. Answering paragraph 66 of the Complaint, Defendant repeats each and
14 every response contained in paragraphs 1-65 as if fully set forth herein.

15 67. Answering paragraph 67 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 68. Answering paragraph 68 of the Complaint, Defendant is without knowledge
19 or information sufficient to form a belief as to the truth of the allegations contained in
20 paragraph 68.

21 Failure to Remove Architectural Barriers in an Existing Facility

22 69. Answering paragraph 69 of the Complaint, the allegations of this paragraph
23 are conclusions of law that require no responsive pleading under the Federal Rules of
24 Civil Procedure and are therefore, specifically denied.

25 70. Answering paragraph 70 of the Complaint, the allegations of this paragraph
26 are conclusions of law that require no responsive pleading under the Federal Rules of
27 Civil Procedure and are therefore, specifically denied.

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1 71. Answering paragraph 71 of the Complaint, Defendant is without knowledge
2 or information sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 71.

4 72. Answering paragraph 72 of the Complaint, Defendant is without knowledge
5 or information sufficient to form a belief as to the truth of the allegations contained in
6 paragraph 72.

7 **Failure to Design and construct an Accessible Facility**

8 73. Answering paragraph 73 of the Complaint, Defendant is without knowledge
9 or information sufficient to form a belief as to the truth of the allegations contained in
10 paragraph 73.

11 74. Answering paragraph 74 of the Complaint, the allegations of this paragraph
12 are conclusions of law that require no responsive pleading under the Federal Rules of
13 Civil Procedure and are therefore, specifically denied.

14 75. Answering paragraph 75 of the Complaint, Defendant is without knowledge
15 or information sufficient to form a belief as to the truth of the allegations contained in
16 paragraph 75.

17 **Failure to Make an Altered Facility Accessible**

18 76. Answering paragraph 76 of the Complaint, Defendant is without knowledge
19 or information sufficient to form a belief as to the truth of the allegations contained in
20 paragraph 76.

21 77. Answering paragraph 77 of the Complaint, the allegations of this paragraph
22 are conclusions of law that require no responsive pleading under the Federal Rules of
23 Civil Procedure and are therefore, specifically denied.

24 78. Answering paragraph 78 of the Complaint, Defendant is without knowledge
25 or information sufficient to form a belief as to the truth of the allegations contained in
26 paragraph 78.

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Failure to Modify Existing Policies and Procedures

79. Answering paragraph 79 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

80. Answering paragraph 80 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80.

81. Answering paragraph 81 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 81.

82. Answering paragraph 82 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 82.

VII. SECOND CLAIM

Disabled Person Act

(The La Salsa Facility)

83. Answering paragraph 83 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-82 as if fully set forth herein.

84. Answering paragraph 84 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

85. Answering paragraph 85 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

86. Answering paragraph 86 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

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87. Answering paragraph 87 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87.

88. Answering paragraph 88 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 88.

89. Answering paragraph 89 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 89.

VIII. THIRD CLAIM

Unruh Civil Rights Act

(The La Salsa Facility)

90. Answering paragraph 90 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-89 as if fully set forth herein.

91. Answering paragraph 91 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

92. Answering paragraph 92 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

93. Answering paragraph 93 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

94. Answering paragraph 94 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94.

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1 95. Answering paragraph 95 of the Complaint, Defendant is without knowledge
2 or information sufficient to form a belief as to the truth of the allegations contained in
3 paragraph 95.

4 96. Answering paragraph 96 of the Complaint, Defendant admits Plaintiff seeks
5 the relief set forth in this paragraph. Except as expressly admitted, Defendant denies
6 each and every allegation contained in paragraph 96.

7 97. Answering paragraph 97 of the Complaint, Defendant admits Plaintiff seeks
8 the relief set forth in this paragraph. Except as expressly admitted, Defendant denies
9 each and every allegation contained in paragraph 97.

10 IX. FOURTH CLAIM

11 Denial of Full and Equal Access to Public Facilities

12 (The La Salsa Facility)

13 98. Answering paragraph 98 of the Complaint, Defendant repeats each and
14 every response contained in paragraphs 1-97 as if fully set forth herein.

15 99. Answering paragraph 99 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 100. Answering paragraph 100 of the Complaint, the allegations of this paragraph
19 are conclusions of law that require no responsive pleading under the Federal Rules of
20 Civil Procedure and are therefore, specifically denied.

21 101. Answering paragraph 101 of the Complaint, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained in paragraph 101. The remaining allegations of this paragraph are conclusions
24 of law that require no responsive pleading under the Federal Rules of Civil Procedure and
25 are therefore, specifically denied.

26 102. Answering paragraph 102 of the Complaint, Defendant is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations
28 contained in paragraph 102. Defendant admits Plaintiff seeks the relief set forth in this

1 paragraph. Except as expressly admitted, Defendant denies each and every allegation
2 contained in paragraph 81.

3 **X. FIFTH CLAIM**

4 **Americans With Disabilities Act of 1990**

5 **Denial of “Full and Equal” Enjoyment and Use**

6 (The Applebee’s Facility)

7 103. Answering paragraph 103 of the Complaint, Defendant repeats each and
8 every response contained in paragraphs 1-102 as if fully set forth herein.

9 104. Answering paragraph 104 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 105. Answering paragraph 105 of the Complaint, Defendant is without
13 knowledge or information sufficient to form a belief as to the truth of the allegations
14 contained in paragraph 105.

15 **Failure to Remove Architectural Barriers in an Existing Facility**

16 106. Answering paragraph 106 of the Complaint, the allegations of this paragraph
17 are conclusions of law that require no responsive pleading under the Federal Rules of
18 Civil Procedure and are therefore, specifically denied.

19 107. Answering paragraph 107 of the Complaint, the allegations of this paragraph
20 are conclusions of law that require no responsive pleading under the Federal Rules of
21 Civil Procedure and are therefore, specifically denied.

22 108. Answering paragraph 108 of the Complaint, Defendant is without
23 knowledge or information sufficient to form a belief as to the truth of the allegations
24 contained in paragraph 108.

25 109. Answering paragraph 109 of the Complaint, Defendant is without
26 knowledge or information sufficient to form a belief as to the truth of the allegations
27 contained in paragraph 109.

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Failure to Design and Construct an Accessible Facility

110. Answering paragraph 110 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 110.

111. Answering paragraph 111 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

112. Answering paragraph 112 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 112.

Failure to Make an Altered Facility Accessible

113. Answering paragraph 113 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 113.

114. Answering paragraph 114 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

115. Answering paragraph 115 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115.

Failure to Modify Existing Policies and Procedures

116. Answering paragraph 116 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

117. Answering paragraph 17 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 117.

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1 118. Answering paragraph 118 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 118.

4 119. Answering paragraph 119 of the Complaint, Defendant admits Plaintiff
5 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
6 denies each and every allegation contained in paragraph 119.

7 **XI. SIXTH CLAIM**

8 **Disabled Persons Act**

9 (The Applebee's Facility)

10 120. Answering paragraph 120 of the Complaint, Defendant repeats each and
11 every response contained in paragraphs 1-119 as if fully set forth herein.

12 121. Answering paragraph 121 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 122. Answering paragraph 122 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 123. Answering paragraph 123 of the Complaint, the allegations of this paragraph
19 are conclusions of law that require no responsive pleading under the Federal Rules of
20 Civil Procedure and are therefore, specifically denied.

21 124. Answering paragraph 124 of the Complaint, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained in paragraph 124.

24 125. Answering paragraph 125 of the Complaint, Defendant admits Plaintiff
25 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
26 denies each and every allegation contained in paragraph 125.

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126. Answering paragraph 126 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 126.

XII. SEVENTH CLAIM

Unruh Civil Rights Act

(The Applebee's Facility)

127. Answering paragraph 127 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-126 as if fully set forth herein.

128. Answering paragraph 128 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

129. Answering paragraph 129 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

130. Answering paragraph 130 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

131. Answering paragraph 131 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 131.

132. Answering paragraph 132 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 132.

133. Answering paragraph 133 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 133.

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1 134. Answering paragraph 134 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 134.

4 **XIII. EIGHTH CLAIM**

5 **Denial of Full and Equal Access to Public Facilities**

6 (The Applebee's Facility)

7 135. Answering paragraph 135 of the Complaint, Defendant repeats each and
8 every response contained in paragraphs 1-134 as if fully set forth herein.

9 136. Answering paragraph 136 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 137. Answering paragraph 137 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 138. Answering paragraph 138 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 139. Answering paragraph 139 of the Complaint, Defendant admits Plaintiff
19 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
20 denies each and every allegation contained in paragraph 139.

21 **XIV. NINTH CLAIM**

22 **Americans With Disabilities Act of 1990**

23 **Denial of "Full and Equal" Enjoyment and Use**

24 (The Cost Plus Facility)

25 140. Answering paragraph 140 of the Complaint, Defendant repeats each and
26 every response contained in paragraphs 1-139 as if fully set forth herein.

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1 141. Answering paragraph 141 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 142. Answering paragraph 142 of the Complaint, Defendant is without
5 knowledge or information sufficient to form a belief as to the truth of the allegations
6 contained in paragraph 142.

7 **Failure to Remove Architectural Barriers in an Existing Facility**

8 143. Answering paragraph 143 of the Complaint, the allegations of this paragraph
9 are conclusions of law that require no responsive pleading under the Federal Rules of
10 Civil Procedure and are therefore, specifically denied.

11 144. Answering paragraph 144 of the Complaint, the allegations of this paragraph
12 are conclusions of law that require no responsive pleading under the Federal Rules of
13 Civil Procedure and are therefore, specifically denied.

14 145. Answering paragraph 145 of the Complaint, Defendant is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations
16 contained in paragraph 145.

17 146. Answering paragraph 146 of the Complaint, Defendant is without
18 knowledge or information sufficient to form a belief as to the truth of the allegations
19 contained in paragraph 146.

20 **Failure to Design and Construct an Accessible Facility**

21 147. Answering paragraph 147 of the Complaint, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained in paragraph 147.

24 148. Answering paragraph 148 of the Complaint, the allegations of this paragraph
25 are conclusions of law that require no responsive pleading under the Federal Rules of
26 Civil Procedure and are therefore, specifically denied.

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1 149. Answering paragraph 149 of the Complaint, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in paragraph 149.

4 **Failure to Make an Altered Facility Accessible**

5 150. Answering paragraph 150 of the Complaint, Defendant is without
6 knowledge or information sufficient to form a belief as to the truth of the allegations
7 contained in paragraph 150.

8 151. Answering paragraph 151 of the Complaint, the allegations of this paragraph
9 are conclusions of law that require no responsive pleading under the Federal Rules of
10 Civil Procedure and are therefore, specifically denied.

11 152. Answering paragraph 152 of the Complaint, Defendant is without
12 knowledge or information sufficient to form a belief as to the truth of the allegations
13 contained in paragraph 152.

14 **Failure to Modify Existing Policies and Procedures**

15 153. Answering paragraph 153 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 154. Answering paragraph 154 of the Complaint, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of the allegations
20 contained in paragraph 154.

21 155. Answering paragraph 155 of the Complaint, Defendant admits Plaintiff
22 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
23 denies each and every allegation contained in paragraph 155.

24 156. Answering paragraph 156 of the Complaint, Defendant admits Plaintiff
25 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
26 denies each and every allegation contained in paragraph 156.

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XV. TENTH CLAIM

Disabled Person Act

(The Cost Plus Facility Facility)

157. Answering paragraph 157 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-156 as if fully set forth herein.

158. Answering paragraph 158 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

159. Answering paragraph 159 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

160. Answering paragraph 160 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

161. Answering paragraph 161 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 161.

162. Answering paragraph 162 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 162.

163. Answering paragraph 163 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 163.

XVI. ELEVENTH CLAIM

Unruh Civil Rights Act

(The Cost Plus Facility)

164. Answering paragraph 164 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-163 as if fully set forth herein.

1 165. Answering paragraph 165 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 166. Answering paragraph 166 of the Complaint, the allegations of this paragraph
5 are conclusions of law that require no responsive pleading under the Federal Rules of
6 Civil Procedure and are therefore, specifically denied.

7 167. Answering paragraph 167 of the Complaint, the allegations of this paragraph
8 are conclusions of law that require no responsive pleading under the Federal Rules of
9 Civil Procedure and are therefore, specifically denied.

10 168. Answering paragraph 168 of the Complaint, Defendant is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations
12 contained in paragraph 168.

13 169. Answering paragraph 169 of the Complaint, Defendant is without
14 knowledge or information sufficient to form a belief as to the truth of the allegations
15 contained in paragraph 169.

16 170. Answering paragraph 170 of the Complaint, Defendant admits Plaintiff
17 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
18 denies each and every allegation contained in paragraph 170.

19 171. Answering paragraph 171 of the Complaint, Defendant admits Plaintiff
20 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
21 denies each and every allegation contained in paragraph 171.

22 **XVII. TWELFTH CLAIM**

23 **Denial of Full and Equal Access to Public Facilities**

24 (The Cost Plus Facility)

25 172. Answering paragraph 172 of the Complaint, Defendant repeats each and
26 every response contained in paragraphs 1-171 as if fully set forth herein.

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1 173. Answering paragraph 173 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 174. Answering paragraph 174 of the Complaint, the allegations of this paragraph
5 are conclusions of law that require no responsive pleading under the Federal Rules of
6 Civil Procedure and are therefore, specifically denied.

7 175. Answering paragraph 175 of the Complaint, the allegations of this paragraph
8 are conclusions of law that require no responsive pleading under the Federal Rules of
9 Civil Procedure and are therefore, specifically denied.

10 176. Answering paragraph 176 of the Complaint, Defendant admits Plaintiff
11 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
12 denies each and every allegation contained in paragraph 176.

13 **XVIII. THIRTEENTH CLAIM**

14 **Americans With Disabilities Act of 1990**

15 **Denial of “Full and Equal” Enjoyment and Use**

16 (The Toys ‘R’ Us Facility)

17 177. Answering paragraph 177 of the Complaint, Defendant repeats each and
18 every response contained in paragraphs 1-176 as if fully set forth herein.

19 178. Answering paragraph 178 of the Complaint, the allegations of this paragraph
20 are conclusions of law that require no responsive pleading under the Federal Rules of
21 Civil Procedure and are therefore, specifically denied.

22 179. Answering paragraph 179 of the Complaint, Defendant denies each and
23 every allegation contained in paragraph 179.

24 **Failure to Remove Architectural Barriers in an Existing Facility**

25 180. Answering paragraph 180 of the Complaint, the allegations of this paragraph
26 are conclusions of law that require no responsive pleading under the Federal Rules of
27 Civil Procedure and are therefore, specifically denied.

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1 181. Answering paragraph 181 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 182. Answering paragraph 182 of the Complaint, Defendant denies each and
5 every allegation contained in paragraph 182.

6 183. Answering paragraph 183 of the Complaint, Defendant denies each and
7 every allegation contained in paragraph 183.

8 **Failure to Design and Construct an Accessible Facility**

9 184. Answering paragraph 184 of the complaint, Defendant admits the TRU
10 facility was constructed after January 1992. Except as expressly admitted, Defendant
11 denies each and every allegation contained in paragraph 184.

12 185. Answering paragraph 185 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 186. Answering paragraph 186 of the Complaint, Defendant denies each and
16 every allegation contained in paragraph 186.

17 **Failure to Make an Altered Facility Accessible**

18 187. Answering paragraph 187 of the Complaint, Defendant denies each and
19 every allegation contained in paragraph 187.

20 188. Answering paragraph 188 of the Complaint, the allegations of this paragraph
21 are conclusions of law that require no responsive pleading under the Federal Rules of
22 Civil Procedure and are therefore, specifically denied.

23 189. Answering paragraph 189 of the Complaint, Defendant denies each and
24 every allegation contained in paragraph 189.

25 **Failure to Modify Existing Policies and Procedures**

26 190. Answering paragraph 190 of the Complaint, the allegations of this paragraph
27 are conclusions of law that require no responsive pleading under the Federal Rules of
28 Civil Procedure and are therefore, specifically denied.

1 191. Answering paragraph 191 of the Complaint, Defendant denies each and
2 every allegation contained in paragraph 191.

3 192. Answering paragraph 192 of the Complaint, Defendant admits Plaintiff
4 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
5 denies each and every allegation contained in paragraph 192.

6 193. Answering paragraph 193 of the Complaint, Defendant admits Plaintiff
7 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
8 denies each and every allegation contained in paragraph 193.

9 **XIX. FOURTEENTH CLAIM**

10 **Disabled Person Act**

11 (The Toys 'R' Us Facility)

12 194. Answering paragraph 194 of the Complaint, Defendant repeats each and
13 every response contained in paragraphs 1-193 as if fully set forth herein.

14 195. Answering paragraph 195 of the Complaint, the allegations of this paragraph
15 are conclusions of law that require no responsive pleading under the Federal Rules of
16 Civil Procedure and are therefore, specifically denied.

17 196. Answering paragraph 196 of the Complaint, the allegations of this paragraph
18 are conclusions of law that require no responsive pleading under the Federal Rules of
19 Civil Procedure and are therefore, specifically denied.

20 197. Answering paragraph 197 of the Complaint, the allegations of this paragraph
21 are conclusions of law that require no responsive pleading under the Federal Rules of
22 Civil Procedure and are therefore, specifically denied.

23 198. Answering paragraph 198 of the Complaint, Defendant denies each and
24 every allegation contained in paragraph 198.

25 199. Answering paragraph 199 of the Complaint, Defendant admits Plaintiff
26 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
27 denies each and every allegation contained in paragraph 199.

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1 200. Answering paragraph 200 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 200.

4 **XX. FIFTEENTH CLAIM**

5 **Unruh Civil Rights Act**

6 (The Toys 'R' Us Facility)

7 201. Answering paragraph 201 of the Complaint, Defendant repeats each and
8 every response contained in paragraphs 1-200 as if fully set forth herein.

9 202. Answering paragraph 202 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 203. Answering paragraph 203 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 204. Answering paragraph 204 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 205. Answering paragraph 205 of the Complaint, Defendant denies each and
19 every allegation contained in paragraph 205.

20 206. Answering paragraph 206 of the Complaint, Defendant denies each and
21 every allegation contained in paragraph 206.

22 207. Answering paragraph 207 of the Complaint, Defendant admits Plaintiff
23 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
24 denies each and every allegation contained in paragraph 207.

25 208. Answering paragraph 208 of the Complaint, Defendant admits Plaintiff
26 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
27 denies each and every allegation contained in paragraph 208.

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XXI. SIXTEENTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Toys ‘R’ Us Facility)

209. Answering paragraph 209 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-208 as if fully set forth herein.

210. Answering paragraph 210 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

211. Answering paragraph 211 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

212. Answering paragraph 212 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

213. Answering paragraph 213 of the Complaint, Defendant admits Plaintiff seeks the relief requested. Defendant otherwise denies each and every allegation contained in paragraph 213.

XXII. SEVENTEENTH CLAIM

Americans With Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

(The Party City Facility)

214. Answering paragraph 214 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-213 as if fully set forth herein.

215. Answering paragraph 215 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

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1 216. Answering paragraph 216 of the Complaint, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in paragraph 216.

4 **Failure to Remove Architectural Barriers in an Existing Facility**

5 217. Answering paragraph 217 of the Complaint, the allegations of this paragraph
6 are conclusions of law that require no responsive pleading under the Federal Rules of
7 Civil Procedure and are therefore, specifically denied.

8 218. Answering paragraph 218 of the Complaint, the allegations of this paragraph
9 are conclusions of law that require no responsive pleading under the Federal Rules of
10 Civil Procedure and are therefore, specifically denied.

11 219. Answering paragraph 219 of the Complaint, Defendant is without
12 knowledge or information sufficient to form a belief as to the truth of the allegations
13 contained in paragraph 219.

14 220. Answering paragraph 220 of the Complaint, Defendant is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations
16 contained in paragraph 220.

17 **Failure to Design and Construct an Accessible Facility**

18 221. Answering paragraph 221 of the Complaint, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of the allegations
20 contained in paragraph 221.

21 222. Answering paragraph 222 of the Complaint, the allegations of this paragraph
22 are conclusions of law that require no responsive pleading under the Federal Rules of
23 Civil Procedure and are therefore, specifically denied.

24 223. Answering paragraph 223 of the Complaint, Defendant is without
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 contained in paragraph 223.

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Failure to Make an Altered Facility Accessible

224. Answering paragraph 224 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 224.

225. Answering paragraph 225 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

226. Answering paragraph 226 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 226.

Failure to Modify Existing Policies and Procedures

227. Answering paragraph 227 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

228. Answering paragraph 228 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 228.

229. Answering paragraph 229 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 229.

230. Answering paragraph 230 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 230.

XXIII. EIGHTEENTH CLAIM

Disabled Person Act

(The Party City Facility)

231. Answering paragraph 231 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-230 as if fully set forth herein.

1 232. Answering paragraph 232 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 233. Answering paragraph 233 of the Complaint, the allegations of this paragraph
5 are conclusions of law that require no responsive pleading under the Federal Rules of
6 Civil Procedure and are therefore, specifically denied.

7 234. Answering paragraph 234 of the Complaint, the allegations of this paragraph
8 are conclusions of law that require no responsive pleading under the Federal Rules of
9 Civil Procedure and are therefore, specifically denied.

10 235. Answering paragraph 235 of the Complaint, Defendant is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations
12 contained in paragraph 235.

13 236. Answering paragraph 236 of the Complaint, Defendant admits Plaintiff
14 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
15 denies each and every allegation contained in paragraph 236.

16 237. Answering paragraph 237 of the Complaint, Defendant admits Plaintiff
17 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
18 denies each and every allegation contained in paragraph 237.

19 **XXIV. NINETEENTH CLAIM**

20 **Unruh Civil Rights Act**

21 (The Party City Facility)

22 238. Answering paragraph 238 of the Complaint, Defendant repeats each and
23 every response contained in paragraphs 1-237 as if fully set forth herein.

24 239. Answering paragraph 239 of the Complaint, the allegations of this paragraph
25 are conclusions of law that require no responsive pleading under the Federal Rules of
26 Civil Procedure and are therefore, specifically denied.

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1 240. Answering paragraph 240 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 241. Answering paragraph 241 of the Complaint, the allegations of this paragraph
5 are conclusions of law that require no responsive pleading under the Federal Rules of
6 Civil Procedure and are therefore, specifically denied.

7 242. Answering paragraph 242 of the Complaint, Defendant is without
8 knowledge or information sufficient to form a belief as to the truth of the allegations
9 contained in paragraph 242.

10 243. Answering paragraph 243 of the Complaint, Defendant is without
11 knowledge or information sufficient to form a belief as to the truth of the allegations
12 contained in paragraph 243.

13 244. Answering paragraph 244 of the Complaint, Defendant admits Plaintiff
14 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
15 denies each and every allegation contained in paragraph 244.

16 245. Answering paragraph 245 of the Complaint, Defendant admits Plaintiff
17 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
18 denies each and every allegation contained in paragraph 245.

19 **XXV. TWENTIETH CLAIM**

20 **Denial of Full and Equal Access to Public Facilities**

21 (The Party City Facility)

22 246. Answering paragraph 246 of the Complaint, Defendant repeats each and
23 every response contained in paragraphs 1-245 as if fully set forth herein.

24 247. Answering paragraph 247 of the Complaint, the allegations of this paragraph
25 are conclusions of law that require no responsive pleading under the Federal Rules of
26 Civil Procedure and are therefore, specifically denied.

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1 248. Answering paragraph 248 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 249. Answering paragraph 249 of the Complaint, the allegations of this paragraph
5 are conclusions of law that require no responsive pleading under the Federal Rules of
6 Civil Procedure and are therefore, specifically denied.

7 250. Answering paragraph 250 of the Complaint, Defendant admits Plaintiff
8 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
9 denies each and every allegation contained in paragraph 250.

10 **XXVI. TWENTY-FIRST CLAIM**

11 **Americans With Disabilities Act of 1990**

12 **Denial of “Full and Equal” Enjoyment and Use**

13 (The Mervyn’s Facility)

14 251. Answering paragraph 251 of the Complaint, Defendant repeats each and
15 every response contained in paragraphs 1-250 as if fully set forth herein.

16 252. Answering paragraph 252 of the Complaint, the allegations of this paragraph
17 are conclusions of law that require no responsive pleading under the Federal Rules of
18 Civil Procedure and are therefore, specifically denied.

19 253. Answering paragraph 253 of the Complaint, Defendant is without
20 knowledge or information sufficient to form a belief as to the truth of the allegations
21 contained in paragraph 253.

22 **Failure to Remove Architectural Barriers in an Existing Facility**

23 254. Answering paragraph 254 of the Complaint, the allegations of this paragraph
24 are conclusions of law that require no responsive pleading under the Federal Rules of
25 Civil Procedure and are therefore, specifically denied.

26 255. Answering paragraph 255 of the Complaint, the allegations of this paragraph
27 are conclusions of law that require no responsive pleading under the Federal Rules of
28 Civil Procedure and are therefore, specifically denied.

1 256. Answering paragraph 256 of the Complaint, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in paragraph 256.

4 257. Answering paragraph 257 of the Complaint, Defendant is without
5 knowledge or information sufficient to form a belief as to the truth of the allegations
6 contained in paragraph 257.

7 **Failure to Design and Construct an Accessible Facility**

8 258. Answering paragraph 258 of the Complaint, Defendant is without
9 knowledge or information sufficient to form a belief as to the truth of the allegations
10 contained in paragraph 258.

11 259. Answering paragraph 259 of the Complaint, the allegations of this paragraph
12 are conclusions of law that require no responsive pleading under the Federal Rules of
13 Civil Procedure and are therefore, specifically denied.

14 260. Answering paragraph 260 of the Complaint, Defendant is without
15 knowledge or information sufficient to form a belief as to the truth of the allegations
16 contained in paragraph 260.

17 **Failure to Make an Altered Facility Accessible**

18 261. Answering paragraph 261 of the Complaint, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of the allegations
20 contained in paragraph 261.

21 262. Answering paragraph 262 of the Complaint, the allegations of this paragraph
22 are conclusions of law that require no responsive pleading under the Federal Rules of
23 Civil Procedure and are therefore, specifically denied.

24 263. Answering paragraph 263 of the Complaint, Defendant is without
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 contained in paragraph 263.

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Failure to Modify Existing Policies and Procedures

264. Answering paragraph 264 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

265. Answering paragraph 265 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 265.

266. Answering paragraph 266 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 266.

267. Answering paragraph 267 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 267.

XXVII. TWENTY-SECOND CLAIM

Disabled Persons Act

(The Mervyn's Facility)

268. Answering paragraph 268 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-267 as if fully set forth herein.

269. Answering paragraph 269 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

270. Answering paragraph 270 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

271. Answering paragraph 271 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

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1 272. Answering paragraph 272 of the Complaint, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in paragraph 272.

4 273. Answering paragraph 273 of the Complaint, Defendant admits Plaintiff
5 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
6 denies each and every allegation contained in paragraph 273.

7 274. Answering paragraph 274 of the Complaint, Defendant admits Plaintiff
8 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
9 denies each and every allegation contained in paragraph 274.

10 **XXVIII. TWENTY-THIRD CLAIM**

11 **Unruh Civil Rights Act**

12 (The Mervyn's Facility)

13 275. Answering paragraph 275 of the Complaint, Defendant repeats each and
14 every response contained in paragraphs 1-274 as if fully set forth herein.

15 276. Answering paragraph 276 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 277. Answering paragraph 277 of the Complaint, the allegations of this paragraph
19 are conclusions of law that require no responsive pleading under the Federal Rules of
20 Civil Procedure and are therefore, specifically denied.

21 278. Answering paragraph 278 of the Complaint, the allegations of this paragraph
22 are conclusions of law that require no responsive pleading under the Federal Rules of
23 Civil Procedure and are therefore, specifically denied.

24 279. Answering paragraph 279 of the Complaint, Defendant is without
25 knowledge or information sufficient to form a belief as to the truth of the allegations
26 contained in paragraph 279.

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1 280. Answering paragraph 280 of the Complaint, Defendant is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations
3 contained in paragraph 280.

4 281. Answering paragraph 281 of the Complaint, Defendant admits Plaintiff
5 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
6 denies each and every allegation contained in paragraph 281.

7 282. Answering paragraph 282 of the Complaint, Defendant admits Plaintiff
8 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
9 denies each and every allegation contained in paragraph 282.

10 **XXIX. TWENTY-FOURTH CLAIM**

11 **Denial of Full and Equal Access to Public Facilities**

12 (The Mervyn's Facility)

13 283. Answering paragraph 283 of the Complaint, Defendant repeats each and
14 every response contained in paragraphs 1-282 as if fully set forth herein.

15 284. Answering paragraph 284 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 285. Answering paragraph 285 of the Complaint, the allegations of this paragraph
19 are conclusions of law that require no responsive pleading under the Federal Rules of
20 Civil Procedure and are therefore, specifically denied.

21 286. Answering paragraph 286 of the Complaint, the allegations of this paragraph
22 are conclusions of law that require no responsive pleading under the Federal Rules of
23 Civil Procedure and are therefore, specifically denied.

24 287. Answering paragraph 287 of the Complaint, Defendant admits Plaintiff
25 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
26 denies each and every allegation contained in paragraph 287.

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XXX. TWENTY-FIFTH CLAIM

Americans With Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

(The Target Facility)

288. Answering paragraph 288 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-287 as if fully set forth herein.

289. Answering paragraph 289 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

290. Answering paragraph 290 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 290.

Failure to Remove Architectural Barriers in an Existing Facility

291. Answering paragraph 291 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

292. Answering paragraph 292 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

293. Answering paragraph 293 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 293.

294. Answering paragraph 294 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 294.

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Failure to Design and Construct an Accessible Facility

295. Answering paragraph 295 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 295.

296. Answering paragraph 296 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

297. Answering paragraph 297 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 297.

Failure to Make an Altered Facility Accessible

298. Answering paragraph 298 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 298.

299. Answering paragraph 299 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

300. Answering paragraph 300 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 300.

Failure to Modify Existing Policies and Procedures

301. Answering paragraph 301 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

302. Answering paragraph 302 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 302.

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1 303. Answering paragraph 303 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 303.

4 304. Answering paragraph 304 of the Complaint, Defendant admits Plaintiff
5 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
6 denies each and every allegation contained in paragraph 304.

7 **XXXI. TWENTY-SIXTH CLAIM**

8 **Disabled Person Act**

9 (The Target Facility)

10 305. Answering paragraph 305 of the Complaint, Defendant repeats each and
11 every response contained in paragraphs 1-304 as if fully set forth herein.

12 306. Answering paragraph 306 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 307. Answering paragraph 307 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 308. Answering paragraph 308 of the Complaint, the allegations of this paragraph
19 are conclusions of law that require no responsive pleading under the Federal Rules of
20 Civil Procedure and are therefore, specifically denied.

21 309. Answering paragraph 309 of the Complaint, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained in paragraph 309.

24 310. Answering paragraph 310 of the Complaint, Defendant admits Plaintiff
25 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
26 denies each and every allegation contained in paragraph 310.

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1 311. Answering paragraph 311 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 311.

4 **XXXII. TWENTY-SEVENTH CLAIM**

5 **Unruh Civil Rights Act**

6 (The Target Facility)

7 312. Answering paragraph 312 of the Complaint, Defendant repeats each and
8 every response contained in paragraphs 1-311 as if fully set forth herein.

9 313. Answering paragraph 313 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 314. Answering paragraph 314 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 315. Answering paragraph 315 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 316. Answering paragraph 316 of the Complaint, Defendant is without
19 knowledge or information sufficient to form a belief as to the truth of the allegations
20 contained in paragraph 316.

21 317. Answering paragraph 317 of the Complaint, Defendant is without
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 contained in paragraph 317.

24 318. Answering paragraph 318 of the Complaint, Defendant admits Plaintiff
25 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
26 denies each and every allegation contained in paragraph 318.

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1 319. Answering paragraph 319 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 319.

4 **XXXIII. TWENTY-EIGHTH CLAIM**

5 **Denial of Full and Equal Access to Public Facilities**

6 (The Target Facility)

7 320. Answering paragraph 320 of the Complaint, Defendant repeats each and
8 every response contained in paragraphs 1-319 as if fully set forth herein.

9 321. Answering paragraph 321 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 322. Answering paragraph 322 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 323. Answering paragraph 323 of the Complaint, Defendant is without
16 knowledge or information sufficient to form a belief as to the truth of the allegations
17 contained in paragraph 323.

18 324. Answering paragraph 324 of the Complaint, Defendant admits Plaintiff
19 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
20 denies each and every allegation contained in paragraph 324.

21 **XXXIV. TWENTY-NINTH CLAIM**

22 **Americans With Disabilities Act of 1990**

23 Denial of "Full and Equal" Enjoyment and Use

24 (The Common Area Facility)

25 325. Answering paragraph 325 of the Complaint, Defendant repeats each and
26 every response contained in paragraphs 1-324 as if fully set forth herein.

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1 326. Answering paragraph 326 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 327. Answering paragraph 327 of the Complaint, Defendant denies each and
5 every allegation contained in paragraph 327 to the extent that it relates to The Store.
6 Defendant is without knowledge or information sufficient to form a belief as to the truth
7 of the allegations as to the other defendants.

8 **Failure to Remove Architectural Barriers in an Existing Facility**

9 328. Answering paragraph 328 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 329. Answering paragraph 329 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 330. Answering paragraph 330 of the Complaint, Defendant denies each and
16 every allegation contained in paragraph 330 to the extent that it relates to The Store.
17 Defendant is without knowledge or information sufficient to form a belief as to the truth
18 of the allegations as to the other defendants.

19 331. Answering paragraph 331 of the Complaint, Defendant denies each and
20 every allegation contained in paragraph 331 to the extent that it relates to The Store.
21 Defendant is without knowledge or information sufficient to form a belief as to the truth
22 of the allegations as to the other defendants.

23 **Failure to Design and Construct an Accessible Facility**

24 332. Answering paragraph 332 of the Complaint, Defendant admits that it leases
25 and operates a retail store located at 1240 Auto Parkway South, Escondido, California
26 92029, and that The Store was constructed after January 1992. Defendant is without
27 knowledge or information sufficient to form a belief as to the truth of the allegations
28 contained in paragraph 323 as to the other defendants.

1 333. Answering paragraph 333 of the Complaint, the allegations of this paragraph
2 are conclusions of law that require no responsive pleading under the Federal Rules of
3 Civil Procedure and are therefore, specifically denied.

4 334. Answering paragraph 334 of the Complaint, Defendant denies each and
5 every allegation contained in paragraph 334 to the extent that it relates to The Store.
6 Defendant is without knowledge or information sufficient to form a belief as to the truth
7 of the allegations as to the other defendants.

8 **Failure to Make an Altered Facility Accessible**

9 335. Answering paragraph 335 of the Complaint, Defendant denies each and
10 every allegation contained in paragraph 335 to the extent that it relates to The Store.
11 Defendant is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations contained in paragraph 335 as to the other defendants.

13 336. Answering paragraph 336 of the Complaint, the allegations of this paragraph
14 are conclusions of law that require no responsive pleading under the Federal Rules of
15 Civil Procedure and are therefore, specifically denied.

16 337. Answering paragraph 337 of the Complaint, Defendant denies each and
17 every allegation contained in paragraph 337 to the extent that it relates to The Store.
18 Defendant is without knowledge or information sufficient to form a belief as to the truth
19 of the allegations as to the other defendants.

20 **Failure to Modify Existing Policies and Procedures**

21 338. Answering paragraph 338 of the Complaint, the allegations of this paragraph
22 are conclusions of law that require no responsive pleading under the Federal Rules of
23 Civil Procedure and are therefore, specifically denied.

24 339. Answering paragraph 339 of the Complaint, Defendant denies each and
25 every allegation contained in paragraph 339 to the extent that it relates to The Store.
26 Defendant is without knowledge or information sufficient to form a belief as to the truth
27 of the allegations as to the other defendants.

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340. Answering paragraph 340 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 340.

341. Answering paragraph 341 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 341.

XXXV. THIRTIETH CLAIM

Disabled Person Act

(The Common Area Facility)

342. Answering paragraph 342 of the Complaint, Defendant repeats each and every response contained in paragraphs 1-341 as if fully set forth herein.

343. Answering paragraph 343 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

344. Answering paragraph 344 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

345. Answering paragraph 345 of the Complaint, the allegations of this paragraph are conclusions of law that require no responsive pleading under the Federal Rules of Civil Procedure and are therefore, specifically denied.

346. Answering paragraph 346 of the Complaint, Defendant denies each and every allegation contained in paragraph 346 to the extent that it relates to The Store. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations as to the other defendants.

347. Answering paragraph 347 of the Complaint, Defendant admits Plaintiff seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant denies each and every allegation contained in paragraph 347.

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1 348. Answering paragraph 348 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 348.

4 **XXXVI. THIRTY-FIRST CLAIM**

5 **Unruh Civil Rights Act**

6 (The Common Area Facility)

7 349. Answering paragraph 349 of the Complaint, Defendant repeats each and
8 every response contained in paragraphs 1-348 as if fully set forth herein.

9 350. Answering paragraph 350 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 351. Answering paragraph 351 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 352. Answering paragraph 352 of the Complaint, the allegations of this paragraph
16 are conclusions of law that require no responsive pleading under the Federal Rules of
17 Civil Procedure and are therefore, specifically denied.

18 353. Answering paragraph 353 of the Complaint, Defendant denies each and
19 every allegation contained in paragraph 353 to the extent that it relates to The Store.
20 Defendant is without knowledge or information sufficient to form a belief as to the truth
21 of the allegations as to the other defendants.

22 354. Answering paragraph 354 of the Complaint, Defendant denies each and
23 every allegation contained in paragraph 354 to the extent that it relates to The Store.
24 Defendant is without knowledge or information sufficient to form a belief as to the truth
25 of the allegations as to the other defendants.

26 355. Answering paragraph 355 of the Complaint, Defendant admits Plaintiff
27 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
28 denies each and every allegation contained in paragraph 355.

1 356. Answering paragraph 356 of the Complaint, Defendant admits Plaintiff
2 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
3 denies each and every allegation contained in paragraph 356.

4 **XXXVII. THIRTY-SECOND CLAIM**

5 **Denial of Full and Equal Access to Public Facilities**

6 (The Common Area Facility)

7 357. Answering paragraph 357 of the Complaint, Defendant repeats each and
8 every response contained in paragraphs 1-356 as if fully set forth herein.

9 358. Answering paragraph 358 of the Complaint, the allegations of this paragraph
10 are conclusions of law that require no responsive pleading under the Federal Rules of
11 Civil Procedure and are therefore, specifically denied.

12 359. Answering paragraph 359 of the Complaint, the allegations of this paragraph
13 are conclusions of law that require no responsive pleading under the Federal Rules of
14 Civil Procedure and are therefore, specifically denied.

15 360. Answering paragraph 360 of the Complaint, Defendant denies each and
16 every allegation contained in paragraph 360 of the extent that it relates to The Store.
17 Defendant is without knowledge or information sufficient to form a belief as to the truth
18 of the allegations as to the other defendants to the extent this paragraph seeks information
19 beyond conclusions of law.

20 361. Answering paragraph 361 of the Complaint, Defendant admits Plaintiff
21 seeks the relief set forth in this paragraph. Except as expressly admitted, Defendant
22 denies each and every allegation contained in paragraph 361.

23
24 **AFFIRMATIVE DEFENSES**

25 For a further answer to Plaintiff's Complaint and by way of affirmative defenses,
26 Defendant alleges as follows:

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1 **FIRST AFFIRMATIVE DEFENSE**

2 362. The Complaint as a whole, and each purported cause of action alleged
3 therein, fails to state facts sufficient to constitute a cause of action against Defendant.

4 **SECOND AFFIRMATIVE DEFENSE**

5 363. Defendant alleges the Complaint, and each purported cause of action alleged
6 therein, is barred because Defendant did not deny or interfere with Plaintiff's access to
7 the goods and/or services provided at The Store.

8 **THIRD AFFIRMATIVE DEFENSE**

9 364. Defendant alleges the Complaint, and each purported cause of action alleged
10 therein, is barred in that the incidents alleged in the Complaint were caused by the fault
11 of other persons and entities of other parties and/or non-parties to this action, and
12 Defendant's liability, if any, should be reduced accordingly.

13 **FOURTH AFFIRMATIVE DEFENSE**

14 365. Defendant alleges the Complaint, and each purported cause of action alleged
15 therein, is barred in that Defendant's conduct was privileged because it was undertaken
16 pursuant to the terms of the applicable laws, regulations, orders, and approvals relating to
17 building construction, renovation and/or remodeling in effect at the time of the
18 construction.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 366. Defendant alleges the Complaint, and each purported cause of action alleged
21 therein, is barred because Plaintiff is estopped by his own conduct to claim any right to
22 damages or any relief against Defendant.

23 **SIXTH AFFIRMATIVE DEFENSE**

24 367. Defendant alleges the Complaint, and each purported cause of action alleged
25 therein is barred because Plaintiff failed, subsequent to the occurrences described in the
26 Complaint, to properly mitigate his damages and thereby is precluded from recovering
27 those damages that could have reasonably been avoided by the exercise of due care on
28 Plaintiff's part.

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 368. Defendant alleges the Complaint, and each purported cause of action alleged
3 therein, is barred because Plaintiff voluntarily and with full knowledge of the matters
4 referred to in the Complaint assumed any and all of the risks, hazards and perils of the
5 circumstances referred to in the Complaint and, therefore, assumed the risk of any
6 injuries or damages sustained by Plaintiff, if any at all.

7 **EIGHTH AFFIRMATIVE DEFENSE**

8 369. Defendant alleges Plaintiff's claims for damages is barred because Plaintiff
9 failed to exercise reasonable and ordinary care, caution or prudence for their own safety
10 and well being to avoid their alleged injuries and damages, if any. Plaintiff is barred
11 from seeking an award of damages for his purported injuries, if any, or any recovery of
12 damages must be reduced, because any such injuries and damages sustained by Plaintiff
13 were proximately caused and contributed to by the negligence of Plaintiff.

14 **NINTH AFFIRMATIVE DEFENSE**

15 370. Defendant has engaged attorneys to represent it in defense of Plaintiff's
16 frivolous, unfounded, and unreasonable actions, and Defendant is thereby entitled to
17 recover reasonable attorneys' fees for the defense of this matter.

18 **TENTH AFFIRMATIVE DEFENSE**

19 371. Defendant alleges the Complaint, and each purported cause of action alleged
20 therein, is barred by reason of Defendant's good faith reliance upon the permissible,
21 reasonable interpretations of California law by local building authorities and issuance of
22 building permits and Certificates of Occupancy for The Store.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 372. Defendant alleges the Complaint, and each purported cause of action alleged
25 therein, is barred by reason of Defendant's good faith reliance upon the advice of
26 architects with respect to The Store.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 373. Defendant alleges the Complaint, and each purported cause of action alleged
3 therein, is barred insofar as Defendant has not made the alterations to The Store that
4 Plaintiff contends should have been made, those changes were not and are not required
5 under federal or California law, and any requirements to make those changes would
6 impose an undue burden upon Defendant.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 374. Defendant alleges the Complaint, and each purported cause of action alleged
9 therein, is barred insofar as Defendant has not made the alterations to The Store that
10 Plaintiff contends should have been made, those changes were not and are not required
11 under federal law because such changes are not readily achievable.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 375. Defendant alleges the Complaint, and each purported cause of action alleged
14 therein, is barred by the applicable statutes of limitations.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 376. Defendant alleges the Complaint, and each purported cause of action alleged
17 therein, is barred to the extent Plaintiff seeks redress for physical and emotional injuries
18 arising from preexisting physical or mental conditions.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 377. Defendant alleges the Complaint, and each purported cause of action alleged
21 therein, is barred in that Defendant provided Plaintiff alternative methods for access to
22 The Store.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 378. Defendant alleges the Complaint, and each purported cause of action alleged
25 therein, is barred because Plaintiff was not a bona fide consumer of The Store. Instead, if
26 Plaintiff visited The Store, he did so for the sole and primary purpose of instituting the
27 instant litigation.

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1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 379. Defendant alleges the Complaint is barred because Plaintiff failed,
3 subsequent to the occurrences described in the complaint, to properly mitigate his
4 damages and thereby is precluded from recovering those damages that could have
5 reasonably been avoided by the exercise of due care on Plaintiff's part.

6 **NINETEENTH AFFIRMATIVE DEFENSE**

7 380. Defendant alleges the Complaint, and each purported cause of action alleged
8 therein, is barred because Plaintiff comes to the Court with unclean hands.

9 **TWENTIETH AFFIRMATIVE DEFENSE**

10 381. Defendant alleges Plaintiff's Sixteenth Claim is barred in that Health and
11 Safety Code sections 19955 et seq. do not provide a private right of action.

12 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

13 382. Because the Complaint is couched in conclusory terms, Defendant cannot
14 fully anticipate all defenses that may be applicable to the within action. Accordingly, the
15 right to assert additional defenses, if and to the extent that such defenses are applicable, is
16 hereby reserved.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 383. Plaintiff's Claim for Relief is barred by the applicable statute of limitations.

19 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

20 384. The Complaint, and each purported cause of action alleged therein, is barred
21 in that Defendant had no independent knowledge, as of the filing of this Answer, of the
22 facts allegedly constituting the cause of action to Plaintiff's Complaint, and based
23 thereon, hereby respectfully requests leave of Court to amend this Answer to include
24 those affirmative defenses that are revealed during the course of Defendant's discovery.

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PROOF OF SERVICE

UNITED STATES DISTRICT COURT – SOUTHERN DISTRICT OF CALIFORNIA

CASE NAME: LARRY McIVER vs. TOYS ‘R’ US – DELAWARE, INC.

CASE NUMBER: 08 CV 0132 IEG (WMc)

I am employed in the County of LOS ANGELES, State of California. I am over the age of 18 and not a party to the within action; my business address is: 725 South Figueroa Street, Suite 2500, Los Angeles, California 90017-5408

On February 19, 2008, I served the foregoing document(s) described as:

DEFENDANT TOYS ‘R’ US – DELAWARE, INC.’S ANSWER TO PLAINTIFF’S UNVERIFIED COMPLAINT

in this action by placing a true copy thereof in a sealed envelope addressed as follows:

Lynn Hubbard, III
Scottlynn J. Hubbard, IV
DISABLED ADVOCACY GROUP
12 Williamsburg Lane
Chico, CA 95926

Telephone: (530) 895-3252
Facsimile: (530) 894-8244

Attorneys for
LARRY McIVER

[XX] BY NOTICE OF ELECTRONIC FILING:

The above-listed counsel have consented to electronic service and have been automatically served by the Notice of Electronic Filing, which is automatically generated by CM/ECF at the time said document was filed, and which constitutes service pursuant to FRCP 5(b)(2)(D).

[XX] FEDERAL I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on February 19, 2008 at Los Angeles, California.

/S/

Veronica C. Gamba